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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,426	04/24/2001	Jonathan W. Nyce	EPI-00311	5444
27194	7590	04/30/2004	EXAMINER	
HOWREY SIMON ARNOLD & WHITE, LLP			JIANG, SHAOJIA A	
BOX 34			ART UNIT	
301 RAVENSWOOD AVE.			PAPER NUMBER	
MENLO PARK, CA 94025			1617	

DATE MAILED: 04/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/841,426	Applicant(s) NYCE, JONATHAN W.	
	Examiner Shaojia A Jiang	Art Unit 1617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 01 April 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-15 and 17-48.

Claim(s) withdrawn from consideration: 16 and 49-79.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

SHAOJIA ANNA JIANG
PATENT EXAMINER

4/29/04

Advisory Action

This Office Action is a response to Applicant's proposed amendment and response after FINAL filed on April 1, 2004.

2. Applicant's proposed amended claim 1 is not deemed to place the application in better form for appeals by materially reducing or simplifying the issues for appeal. More importantly Applicant's proposed amendment does not please the application in conditon for allowance as further discussed below.

5. The rejection of Claims 1-15 and 17-41 made under 35 U.S.C. 102(b) as being anticipated by Nyce (5,527,789) for reasons of record stated in the Final Office Action dated October 1, 2003 is maintained.

The rejection of Claims 42-48 made under 35 U.S.C. 103(a) as being unpatentable over the same reference by Nyce (5,527,789) for reasons of record stated in the Final Office Action dated October 1, 2003 is maintained.

The rejection of claims 1-15 and 17-48 made under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-19 of U.S. Patent No. 5,527,789 for reasons of record stated in the Final Office Action dated October 1, 2003 is maintained.

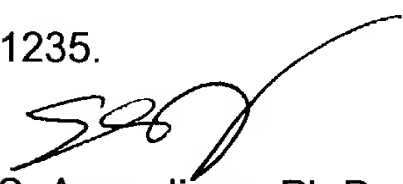
The provisional rejection of claims 1-15 and 17-48 made under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims claim 159 of copending Application No. 10/072,010 for reasons of record stated in the Final Office Action dated October 1, 2003 is maintained.

Applicant's remarks filed April 1, 2004 with respect to the rejections of record, have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated October 1, 2003.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is 571.272.0627. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on 571.272.0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.


S. Anna Jiang, Ph.D.
Patent Examiner, AU 1617
April 29, 2004

SHAOJIA ANNA JIANG
PATENT EXAMINER